

**AGREEMENT BETWEEN LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
AND  
SOUTHWEST FLORIDA ECONOMIC DEVELOPMENT ALLIANCE, INC.**

This AGREEMENT is made and entered into this 19<sup>th</sup> day of April, 2016, by and between Lee County, a political subdivision and Charter County of the State of Florida (the "COUNTY") and Southwest Florida Economic Development Alliance, Inc. ("ALLIANCE"), a Florida not-for-profit corporation.

WITNESSETH

WHEREAS, the COUNTY has determined that strategic marketing and business outreach activities provided through the ALLIANCE will help promote a more diverse and prosperous regional economy and s u c h activities are in the public interest and serve a lawful and beneficial purpose for the COUNTY and the Southwest Florida Region; and

WHEREAS, the COUNTY has determined that it is in the best interests of the COUNTY to support regional economic development efforts; and

WHEREAS, the ALLIANCE is a business and economic development organization with a mission to enhance the Southwest Florida Region's economic well-being and to create a vision to maintain and strengthen the economy of the Southwest Florida Region; and

WHEREAS, the ALLIANCE desires to collaborate with the COUNTY in the achievement of the economic development goals and objectives of the Lee County Board of County Commissioners (the "BOCC"); and

WHEREAS, the ALLIANCE, in concert with the BOCC, has determined that the strategies to achieve such objectives include those below:

- Marketing the COUNTY in conjunction with the Southwest Florida Region to recruit employment opportunities for residents;
- Strengthening and maintaining a communications network that promotes the image and assets of the COUNTY in conjunction with the Southwest Florida Region; and

WHEREAS, the COUNTY desires to have the ALLIANCE execute the strategies set forth above and the ALLIANCE is willing to undertake such functions under the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, and other good and valuable consideration, the COUNTY and the ALLIANCE agree as follows.

ARTICLE I  
SCOPE OF SERVICES

The ALLIANCE shall promote economic development for the COUNTY by providing the services and activities described in Exhibit "A", Scope of Services, attached hereto and by reference made a part hereof.

RECEIVED

APR 27 2016

ECONOMIC DEVELOPMENT

**ARTICLE II**  
**PERIOD OF AGREEMENT**

This Agreement shall be effective upon execution by both parties and shall cover services provided from October 1, 2015, until September 30, 2016, unless otherwise terminated in accordance with this Agreement or extended by mutual written Agreement of the parties.

**ARTICLE III**  
**CONSIDERATION AND LIMITATION**

For its performance under this Agreement, the ALLIANCE will receive funds from the COUNTY in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00). It is intended that the services performed by ALLIANCE shall be on a cost reimbursement methodology for actual eligible expenditures. Actual expenditures eligible as a basis for reimbursement can and shall include salaries and employee benefits, costs for ALLIANCE personnel performing services described in Exhibit "B", as well as ALLIANCE costs of operating and maintaining its website and outreach event type marketing. ALLIANCE shall be entitled to reimbursement of eligible expenditures only to be distributed no more frequently than on a quarterly basis for expenses approved by the County.

All invoices shall be submitted in accordance with COUNTY procedures and in a form acceptable to the COUNTY and the ALLIANCE.

Eligible operating expenses incurred to provide services consistent with the scope of services described in Exhibit "A" are outlined in Exhibit "B". No COUNTY funds will be expended for the ALLIANCE's purchase of equipment (with the exception of software and other digital and electronic tools, i.e. website creation, Business Retention/Expansion software, etc.), food, beverages or entertainment costs or in support of electioneering.

**ARTICLE IV**  
**PAYMENT AND REPORTING REQUIREMENTS**

For its performance under this Agreement, County shall pay to the ALLIANCE upon submittal of a quarterly report and completion of the deliverables referenced in Exhibit "A", Scope of Services. All payment requests by the ALLIANCE to the COUNTY shall be submitted with a completed Program Performance Report in a form acceptable to the COUNTY and the ALLIANCE, as generally outlined and set forth in Exhibit "C" attached hereto and by reference made a part hereof.

Payments to the ALLIANCE will be made within forty-five (45) days of requests therefore in accordance with the following: Website Expenses and Marketing \$20,000; Regional Marketing and Outreach Events \$30,000; Personnel Costs (salary and wages) \$50,000 for a total not to exceed \$100,000.

If the COUNTY determines, through its inspection or review that the ALLIANCE has performed, or is performing less than the total agreed upon services, then the COUNTY shall notify the ALLIANCE in writing specifying those services which it alleges have not been performed or fully performed and the ALLIANCE shall have thirty (30) days from receipt thereof to submit a revised Program Performance Report which shall address such allegations in detail and/or shall meet with the appropriate representatives of the COUNTY to discuss resolution thereof and cure or remedy any services not fully performed, and upon failure thereof, the COUNTY shall be entitled to reduce payment otherwise due for such services not fully performed on a pro-rata basis.

The ALLIANCE shall submit its first payment request, and Program Performance Report on or before May 1, 2016, and its second request on or before July 15, 2016. The ALLIANCE shall submit its final payment request, Program Performance Report, and year-end analysis, and any other required reports within fifteen (15) days of the expiration of the term of this Agreement, or earlier termination of this Agreement.

If the ALLIANCE fails to comply with the requirements of this Article, the COUNTY may refuse to honor or be liable for payment of any late request for payment. Reimbursements will not carry over from one COUNTY fiscal year to a new COUNTY fiscal year.

## ARTICLE V MAINTENANCE OF RECORDS

The ALLIANCE shall maintain such financial records and accounts, including invoices, purchase orders and backup materials or documents as are deemed necessary to assure a proper accounting for all COUNTY funds for which the COUNTY is obligated to reimburse the ALLIANCE under the terms of this Agreement. The aforesaid records and accounts shall be made available for inspection purposes at reasonable times and upon reasonable notice during normal business hours and as often as the COUNTY may deem necessary to verify reimbursements and any other financial records or matters covered by this Agreement. The ALLIANCE shall also provide timely and reasonable access to the ALLIANCE's Executive Director at times convenient for the Executive Director for the purpose of questions or explanations related to such records and accounts. The ALLIANCE shall retain for such inspection all of its records and supporting documentation applicable to this Agreement for five (5) years after receipt of final payment from the COUNTY, or until any or all questioned costs have been resolved or litigation, if any, is completed, in the event funds expended under this Agreement are questioned or become the subject of litigation.

In addition, ALLIANCE shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

## ARTICLE VI INDEMNIFICATION

The ALLIANCE shall indemnify, hold harmless, and defend the COUNTY, its agents and employees from and against any and all liabilities, losses, claims, damages, demands, expenses or actions, either at law or in equity, including court costs and attorneys' fees, that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any act of fraud or defalcation by the ALLIANCE, its agents, subcontractors, assigns, heirs, and employees during performance under this Agreement. The extent of its indemnification shall be limited by the insurance available to ALLIANCE in accord with Article X of this Agreement. In any and all claims against the COUNTY or any of its agents or employees by any employee of the ALLIANCE, any subcontractor, heir, assign, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall be limited to the amount or type of damages, compensation or benefits payable by or for the ALLIANCE or any subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE VII  
BOARD OF DIRECTORS

The COUNTY will be allotted three (3) ex officio voting members of the Director positions. Those three (3) positions will be filled by a County Commissioner, the County Manager and the Economic Development Director.

ARTICLE VIII  
TERMINATION

This Agreement may be terminated with or without cause by either party by giving sixty (60) days prior written notice of such intent.

The aforesaid termination notices, as well as all other notices required herein, shall be considered received by the ALLIANCE and the COUNTY if sent by certified mail, return receipt requested, or by overnight personal delivery service requiring a signature for delivery, and addressed as provided for in Article XXVIII of this Agreement.

ARTICLE IX  
EQUAL OPPORTUNITY CLAUSE

The ALLIANCE agrees that it is an equal opportunity employer.

ARTICLE X  
STATEMENT OF ASSURANCE

During the performance of this Agreement, the ALLIANCE assures the COUNTY that the ALLIANCE is in compliance with Title VII of the 1964 Civil Rights Act, as amended, the Florida Civil Rights Act of 1992, as amended, and that the ALLIANCE does not, on the grounds of race, color, national origin, religion, sex, age, handicap or marital status, discriminate in any form or manner against the ALLIANCE's employees or applicants for employment. Further, the ALLIANCE assures the COUNTY of the ALLIANCE's compliance with the Americans with Disabilities Act of 1990, as amended, as applicable. The ALLIANCE understands and agrees that this Agreement is conditioned upon the veracity of such statements of assurance. Furthermore, the ALLIANCE assures the COUNTY that it will comply with Title VI of the Civil Rights Act of 1964 when federal grant(s) is/are involved. Other applicable Federal and State laws, Executive Orders, and regulations prohibiting discrimination as hereinabove referenced are included by this reference thereto. This statement of assurance shall be interpreted to include Vietnam-Era Veterans and Disabled Veterans within its protective range of applicability.

ARTICLE XI  
INSURANCE

The ALLIANCE shall provide and maintain commercial general liability insurance with minimum coverage limits of \$500,000 throughout the period of this Agreement on behalf of the ALLIANCE and the COUNTY. The COUNTY shall be named as an additional named insured on the commercial general liability insurance, a copy of the declarations page thereof being attached in Exhibit D, may be asserted against the COUNTY by reason of the act or activities of the ALLIANCE. The ALLIANCE shall maintain workers' compensation coverage as required by Florida law.

All insurance shall be from responsible companies duly authorized to do business in the State of Florida. Every insurance policy must provide for up to thirty (30) days prior written notice to the COUNTY of any cancellation, intent not to renew, or reduction in the policy coverage. Coverage shall be documented by a Certificate of Insurance.

ARTICLE XII  
Page 4 of 11

## CONFLICT OF INTEREST

The ALLIANCE represents that it presently has no interest, and shall acquire no such interest: financial or otherwise, direct or indirect, nor engage in any business transaction or professional activity; or incur any obligation of any nature which would conflict in any manner with the performance of service required hereunder.

## ARTICLE XIII DRUG FREE WORKPLACE

The ALLIANCE shall administer, in good faith, a policy designed to ensure that the ALLIANCE's employees, agents and subcontractors are free from the illegal use, possession, or distribution of drugs or alcohol.

## ARTICLE XIV GOVERNING LAW; VENUE

This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, or the laws, rules, and regulations of the United States if the ALLIANCE is providing services funded by the United States Government. Venue shall be in Lee County, Florida.

## ARTICLE XV

### COMPLIANCE

The ALLIANCE shall comply with the requirements of all federal, state, and local laws, rules, codes, ordinances and regulations pertaining to this Agreement.

## ARTICLE XVI ASSIGNMENT

Neither party may assign or transfer its rights or obligation under this Agreement without the prior written consent of the other party.

## ARTICLE XVII HEADINGS

Article headings have been included in this Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement.

## ARTICLE XVIII WAIVER

A waiver of any performance or default by either party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of any of the same terms, covenants, and conditions of this Agreement. The payment or acceptance of funds for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

## ARTICLE XIX ADDITIONAL RIGHTS AND REMEDIES

Nothing contained herein shall be construed as a limitation on such other rights and remedies available to the parties at law, or in equity, which may now or in the future be applicable.

ARTICLE XX  
ORDER OF PRECEDENCE

In the event of any conflict between the provisions of the Articles of this Agreement and the exhibits hereto, the contents of the Articles of this Agreement shall control over the contents of the exhibits.

ARTICLE XXI  
SEVERABILITY

In the event any section, sentence, clause, or provision of this Agreement is held to be invalid or illegal, the remainder of the Agreement shall not be affected by such invalidity or illegality and shall remain in full force and effect.

ARTICLE XXII  
PROJECT PUBLICITY

Any news release or other type of publicity pertaining to the services performed by the ALLIANCE pursuant to this Agreement must recognize the contribution of the BOCC as a funding source. The ALLIANCE being a not-for-profit corporation receiving public funding or non-monetary contributions through the COUNTY shall recognize the COUNTY for its contribution in all promotional materials and at any event or workshop for which COUNTY funds are allocated. In written materials, the reference to the COUNTY must appear in the same size letters and font type as the name of any other funding sources.

In addition, any development project announcement, ceremonial business opening, or publicity event resulting from efforts of the ALLIANCE, and particularly those projects induced with COUNTY funded financial incentives or other contributions, will be planned in cooperation with the COUNTY's Economic Development and Communications Departments for purposes of coordinating COUNTY's official COUNTY protocol and public recognition. Prior notification to the two Departments for such events will be no less than fifteen (15) working days whenever possible or practicable, and potential prospects will be made aware of the COUNTY's publicity protocol before final inducement with any incentive packages or contribution.

ARTICLE XXIII  
SURVIVABILITY

Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

ARTICLE XXIV  
THIRD PARTY BENEFICIARIES

This Agreement is for the benefit of the COUNTY and the ALLIANCE. No third party is an intended beneficiary so as to entitle that person to sue for an alleged breach of this Agreement.

ARTICLE XXV  
POLITICAL ACTION

The ALLIANCE shall not engage, participate or intervene in any form of political campaign on behalf of, or in opposition to, any candidate for political office.

ARTICLE XXVI  
MERGER; MODIFICATIONS

This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby. This Agreement may not be modified, amended, extended, or canceled, verbally or by conduct of the parties, but only by a written instrument executed by the COUNTY and the ALLIANCE. Similarly, no contract which purports to affect the terms of this Agreement shall be valid as it affects this Agreement, unless in writing and executed by the COUNTY and the ALLIANCE.

ARTICLE XXVII  
NOTICES

All notices required or permitted to be given by a party under this Agreement shall be in writing and sent to the other party by certified mail, return receipt requested, or by overnight personal delivery service requiring a signature for delivery, and shall be addressed as follows:

If to the ALLIANCE:

Southwest Florida Economic Development Alliance, Inc.  
c/o Richard C. Grant, Esq.  
Grant Fridkin Pearson, P.A.  
5551 Ridewood Drive, Suite 501  
Naples, FL 34104

If to LEE COUNTY:

Director, Lee County Economic Development Office  
2201 Second Street, Ste 500  
Fort Myers, FL 33901

With copies to:

County Attorney, Lee County  
P.O. Box 398  
Fort Myers, FL 33902-0398

IN WITNESS WHEREOF, this Agreement was dated on the day and year first written above.

ATTEST:  
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: Michelle M. Miller  
Deputy Clerk

BY: Frank Mann  
Frank Mann, Chair



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

Richard H. Welch  
County Attorney's Office

ATTEST:

SOUTHWEST FLORIDA ECONOMIC DEVELOPMENT  
ALLIANCE, INC.

By: Valerie A. G. Childs

By: Lara A. Holquist  
Lara A. Holquist





**EXHIBIT A**  
**SCOPE OF SERVICE FY2016**

**I. Objective: Marketing Outreach & Site Selector Relationships**

The activities of the Alliance to strengthen the Southwest Florida Region economy by activities that will include, but not be limited to: generating business awareness and interest in Southwest Florida through targeted outreach, marketing and relationship building and serving as a transparent economic development coordinator in disseminating leads.

**Performance Criteria**

The ALLIANCE shall provide statements to include evidence and invoices substantiating the following activities/accomplishments for reimbursement:

**Deliverable 1:** Approved Annual Marketing Plan developed in conjunction with Marketing Advisory Committee, to include professionals from Lee County.

**II. Objective: Website Expense and Marketing Data**

The Alliance will manage the regional data repository and website, keeping the information accurate, current, and relevant and market the site to drive activity.

**Performance Criteria**

The ALLIANCE shall provide statements to include evidence and invoices substantiating the following activities for reimbursement:

**Deliverable 2:** Maintain website to highlight attributes of the Southwest Florida Region including Lee County Business Development programs. The data updates and website refreshments will be performed regularly and programs will be initiated to market the website and optimized its usage.

**III. Objective: Staff & Operations**

The Alliance Director would lead the Alliance and represent the organization both externally and internally to the region. The Director would oversee development and execution of the annual marketing plan and act as liaison for economic development activities for Southwest Florida.

**Performance Criteria**

The ALLIANCE shall provide statements to include evidence and invoices substantiating the following activities for reimbursement:

**Deliverable 3:** Annual Report Presentation to the Lee County Board of Commissioners once during the term of this Agreement reporting on the marketing, recruitment, and expansion/retention activities for the Southwest Florida Region.

**EXHIBIT B**  
**BUDGET DETAIL FOR SERVICES FY2016**

1. Website Expenses and Marketing	\$20,000
2. Regional Marketing and Outreach Events	\$30,000
3. Personnel Costs (salary and wages)	<u>\$50,000</u>
	\$100,000

NOTE: When completing payment requests complete the appropriate forms and attach detailed documentation identifying expenses in the above budget categories only.

**EXHIBIT C**  
**PROGRAM PERFORMANCE AND METRICS REPORT FY2016**

REPORT PERIOD \_\_\_\_\_ THROUGH \_\_\_\_\_

PERCENTAGE OF CONTRACT COMPLETED \_\_\_\_\_%

**I. ACCOMPLISHMENTS:**

<b>Report No.</b>	<b>Metric</b>
1. Submit on or before, May 1, 2016.	Number of unique prospects delivered to Lee County Economic Development Office
2. Submit on or before, June 30, 2016	Number of unique prospects delivered to Lee County Economic Development Office
3. Submit within fifteen (15) days of expiration or termination.	Number of unique prospects delivered to Lee County Economic Development Office

**II. PROBLEMS:**

**EXHIBIT D**  
**ALLIANCE GENERAL LIABILITY COVERAGE DECLARATION**  
**SHEET**

**Southern-Owners Ins. Co.**  
**Policy # 142312-20879490-14**

SOUTHERN-OWNERS INS.CO.

AGCT BB&T-OSWALDTRIPPEANDCOMPANY 12-  
0310-00 MKTTERR068Company  
Bill

POLICYNUMBER142312-2087940-14

INSURED SOUTHWEST FLORIDA ECONOMIC

Term 05-20-2014 to 05-20-

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COMMERCIALGENERALLIABILITYCOVERAGE

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## LIMITSOFINSURANCE

General Aggregate	\$2,000,000
Other Than Products-Completed Operations) Products-Completed OperationsAggregate Personal Injury And Advertising Injury	2,000,000
Each Occurrence	1,000,000
Damage to Premises Rented to You (Fire Damage) Medical Payments	1,000,000
Hired Auto 8Non-Owned Auto	50,000 Any One Premises 5,000 Any One Person
	1,000,000 Each Occurrence

Twice the "General Aggregate Limit", shown above, is provided at no additional charge for each 12 month period in accordance with form 55300.

AUDITTYPE:Non-Audited

FORMSTHATAPPLYTOTTHISCOVERAGE:59350 COI-08) 55146 (06-04) 55028 (12-04)  
55160 (12-04) IL0021 (07-02) 55296 (09-09) 55300 C07-05) CG0220 (03-12) IL0017 CII-85)  
55513 CII-11) 55168 CII-04)

## LOCATIONOFPREMISESYOUOWN,RENTOROCCUPY

LOC001 BLDG 0015551 Ridgewood Dr Ste 501  
Naples, FL 34108-2719

TERRITORY: 006 COUNTY: Lee

Classification	Subline	Premium Basis	Rates	Premium
Hired Auto 8Non-Owned Liability	CODIE04001 Auto	Flat Charge		\$69.00
Clubs - Civic, Service Or Social - No Buildings Or Premises Owned Or Leased Except For Office Purposes CNot-For Profit)	CODE41670 Prem/Op Prod/Comp Op	Members 100 100	Each 1.345 .016	\$135.00 \$2.00
Additional Interests Managers/Lessors Of Premises The Phil Llc	CODE49950 Prem/Op	Flat Charge		\$25.00